
Judiciary Committee

HB 1036

Title: An act relating to the Washington code of military justice.

Brief Description: Concerning the Washington code of military justice.

Sponsors: Representatives Kelley, Morrell, Moeller, Rodne, Seaquist, McCoy, Green, Goodman, Kirby, McCune, Hurst, Miloscia, Hunt, Appleton, Chase, Conway, Williams, Campbell, Ross and Bailey; by request of Washington Military Department.

Brief Summary of Bill

- Applies the Washington Code of Military Justice (WCMJ) to members of the Washington State Guard and Washington National Guard committing military offenses, whether or not they are on "duty status."
- Specifies when the military has jurisdiction over certain offenses.
- Specifies procedures and authority of the different courts-martial.
- Adds new offenses to the WCMJ and clarifies the offense of drunk driving.
- Makes other changes to criminal procedures under the WCMJ.

Hearing Date: 1/15/09

Staff: Trudes Tango (786-7384)

Background:

The Washington Code of Military Justice (WCMJ) governs the organization, administration, and duties of the state militia, which consist of the Washington State Guard and the Washington National Guard. The Washington National Guard is a component of the U.S. Armed Forces and serves both the Governor under state law and the President under federal law. Unless called into federal service, the Washington National Guard remains under the control of the state and is not subject to the federal Uniform Code of Military Justice (UCMJ). Instead, members of the guard, when not called into federal service, are subject to the WCMJ. The WCMJ was adopted in 1963

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and, except for some amendments in 1989, the Legislature has not made significant changes to the WCMJ since its adoption.

Whether a guard member is subject to the WCMJ depends on whether the member is on "duty status." The WCMJ applies to a guard member if the member commits an offense prohibited by the WCMJ while on duty status (meaning, the member is on full-time active duty or inactive duty, which includes weekend drills and periodic training, and travel to and from duty).

The offenses in the WCMJ are generally military offenses (for example, being absent without leave, disrespecting officers, theft of military property, and breach of the peace). There is also a general provision making all disorders and neglects to the prejudice of good order and discipline punishable by court-martial. Offenses such as murder, rape, and assault are excluded from the WCMJ and are left to the state courts.

Serious offenses are tried by general or special court-martial, which must have a minimum number of members sitting on the court-martial. Less serious offenses are generally handled by summary courts-martial. The different levels of courts-martial may impose different types of punishment. General and special courts-martial may impose punishment that includes fines, forfeiture of pay, dismissal or dishonorable discharge, and reduction in rank. The WCMJ addresses procedures for providing military counsel to the accused, pretrial and trial procedures, and other procedural matters.

Summary of Bill:

Various changes are made to the WCMJ addressing: (1) when the WCMJ applies to guard members; (2) the authority and procedures of the different courts-martial and punishments each can impose; (3) new offenses; and (4) other criminal procedures.

Jurisdiction of the WCMJ

The WCMJ applies to members who commit military offenses, whether or not the member is on duty status. Military offenses are those offenses listed under the WCMJ. Nonmilitary offenses are offenses listed in the state criminal code.

It is made explicit that the military authority has primary jurisdiction over military offenses. The civil courts have primary jurisdiction over nonmilitary offenses. If an offense could be both military and nonmilitary, the military may proceed only after the civil authorities decline to prosecute or dismiss the charge, provided jeopardy has not attached.

Offenses and punishment

New offenses are added to the WCMJ: (1) assault of one guard member against another member; and (2) use, possession, or distribution of a controlled substance in an installation, vessel, vehicle, or aircraft used by or under the control of the military. The offense of drunk driving specifically uses the .08 blood or breath alcohol concentration (BAC) standard. The general misconduct section is amended to include "all conduct of a nature to bring discredit upon the organized militia or armed forces."

The statute of limitations for desertion is expanded from three years to five years. A statute of limitations of two years is imposed for minor offenses that may be punished without a court-martial.

The fine that a general court-martial may impose is increased from \$200 to \$300. The amount of pay that may be docked as punishment by a summary court-martial is specified to be not more than one-half month's pay for two months.

Criminal procedures

While investigating a charged offense, if there is evidence that the accused committed an uncharged offense, the investigating officer may investigate that matter without first charging the offense if certain procedural and due process requirements are met.

The accused may be represented by military counsel of his or her own selection if that counsel is reasonably available, as determined by rules established by the state judge advocate.

Procedures are established for trial counsel and defense counsel exercising challenges for cause and peremptory challenges. If a challenge for cause reduces the court below the minimum number of members required, all parties must either exercise or waive any remaining challenge for cause before additional members are assigned to the court. The parties may exercise one peremptory challenge against the new members of the court who were not previously subject to peremptory challenge.

Who is authorized to convene general and specific courts-martial is specified. A military judge must be a judge advocate and may not be assigned nonlegal duties unless authorized by the state judge advocate. The Adjutant General must establish procedures for certifying, appointing, detailing, and removing military judges.

If charges are dismissed as defective or insufficient for any cause and the statute of limitations has expired or will expire within 180 days after the dismissal date, new charges may be brought if the new charges are received by the summary court-martial within 180 days after dismissal of the charges and the charges allege the same acts or omissions that were alleged or included in the dismissed charges.

Notice to enlisted members

Provisions of the WCMJ must be provided to newly enlisted members within 60 days, rather than 30 days, of their enlistment and must be explained to the members each time he or she re-enlists or extends enlistment, rather than every year.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.